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COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS WASHINGTON, DC 20510–6175

January 31, 2014

## Dear Colleague:

As the Ranking Member of the Committee on Environment and Public Works (EPW), I have worked with other Committee members on rigorous oversight of the Environmental Protection Agency (EPA) and worked closely with the EPA Office Inspector General (OIG). While my partnership with the OIG has produced some very tangible results, I have recently been alarmed by an unprecedented change in how the OIG executes its responsibilities to Congress, and the Senators and Members that comprise this institution. In my opinion this change fundamentally alters the relationship the OIG has with this institution and was prompted by pure political pressure from EPA apologists. Accordingly, I want to inform you of this change so that you have the opportunity to evaluate how this change might affect work you request from the EPA OIG moving forward.

Prescribed by the Inspector General Act of 1978, one of the OIG's core functions includes the responsibility to respond to Congressional requests in matters of agency waste, fraud and abuse. Primarily, the OIG responds to such requests through evaluation, audit and investigatory reports to Congress. According to the EPA OIG, "Congress is one of the IG's principal customers, we carefully consider requests submitted in writing to audit, evaluate, or investigate issues within our authority or jurisdiction from any committee or member of Congress." Further, the EPA OIG delineates a process for accepting and disseminating such requests, in an official EPA OIG Congressional and Medial Protocols, last published in September 2013. The IG's protocols clearly state that in response to a Congressional request the report or work product is produced to the requestor before it is available to the public.

After I learned of John C. Beale's notorious actions, and pursuant to this protocol, I requested the OIG, "Immediately launch an investigation into the Agency's policies and processes that facilitated Mr. Beale's fraud, and to make recommendations to ensure that this does not happen again." On September 5, 2013, the OIG confirmed his intention to perform an audit in response to my request. Subsequent correspondence from the OIG specified that the first part of my request would culminate with two Early Warning Action reports in December 2013, focusing on travel and pay issues. On November 27, 2013, the OIG requested a briefing on the reports

<sup>3</sup> Letter from Hon. David Vitter, Ranking Member, S. Comm. on Envt. & Pub. Works, to Arthur Elkins, Inspector Gen., Envtl. Prot. Agency (Aug. 27, 2013).

<sup>&</sup>lt;sup>1</sup> Office of Inspector Gen., EPA Office of Inspector General Congressional and Media Protocols, Envtl. Prot. Agency (Sept. 2013), available at <a href="http://www.epa.gov/oig/reports/2013/Congressional\_Media\_Protocols\_2013-Sept\_Certified.pdf">http://www.epa.gov/oig/reports/2013/Congressional\_Media\_Protocols\_2013-Sept\_Certified.pdf</a>.

 $<sup>^{2}</sup>$  Id

<sup>&</sup>lt;sup>4</sup> Letter from Arthur Elkins, Inspector Gen., Envtl. Prot. Agency, to Hon. David Vitter, Ranking Member, S. Comm. on Envt. & Pub. Works (Sept. 5, 2013).

<sup>&</sup>lt;sup>5</sup> E-mail from Staff, Office of Inspector Gen., Envtl. Prot. Agency, to Republican Staff, S. Comm. on Envt. & Pub. Works (Nov. 7, 2013, 03:04 PM EST).

with my staff for December 10, 2013, and specified that on the following day the reports would be made public and the OIG would brief EPW majority staff. However, the morning of the briefing, the OIG abruptly cancelled with my staff. In response to an inquiry from my staff, the OIG explained "While we had originally planned to brief you today, we were met with considerable opposition from the majority." Only after my staff questioned the OIG's decision in light of its protocols, the IG averred, "the Chair invoked the requirement under IG Act section 4(a)(5) that the IG keep Congress fully and currently informed and made her demand independent of and therefore not controlled by [the IG's] report protocol." Thereafter, the OIG abandoned its protocols and denied my staff the opportunity to receive a separate briefing prior to dissemination.

Subsequently, the current EPA IG, Arthur Elkins, confirmed that there existed no precedent for his office to abruptly alter its interpretation of their obligations to Congress. In a January 14, 2014, letter Elkins has since confirmed that his office's actions were problematic and stated, "In light of the OIGs obligations under the IG Act to be open and transparent - and given the issues raised by recent reports - the OIG is revisiting practicality and fairness issues as they relate to the sequence currently dictated by our protocol. Should we decide to repeal or revise that protocol, we will publically announce the change."

While the IG's decision to revoke the privileges of a requesting office resulted in confusion and inconvenience for my staff, this decision has far reaching consequences for all work the OIG performs for Congress now and in the future. At minimum, your office should no longer be under the impression, as a requestor of an investigation, evaluation or an audit, that certainty exists in the privilege of first review. This change could have broader implications for your investigatory strategy and subsequent dissemination of information. Moreover, it seems the unjustified request of a colleague, who did not commission the work, could at any time abrogate your ability to digest the information and research you initiated with the OIG before the information is available to the public. I have made my concerns on this matter known to the IG, but wanted to ensure that you were not similarly surprised should this policy change affect a future request. If you have any questions on this matter, please feel free to contact my Committee staff at 202-224-6176.

Sincerely,

David Vitter

Ranking Member

Committee on Environment and Public Works

<sup>&</sup>lt;sup>6</sup> E-mail from Staff, Office of Inspector Gen., Envtl. Prot. Agency, to Republican Staff, S. Comm. on Envt. & Pub. Works (Nov. 27, 2013, 01:13 PM EST).

<sup>&</sup>lt;sup>7</sup> E-mail from Staff, Office of Inspector Gen., Envtl. Prot. Agency, to Republican Staff, S. Comm. on Envt. & Pub. Works (Dec. 10, 2013, 11:57 AM EST).

<sup>&</sup>lt;sup>8</sup> E-mail from Staff, Office of Inspector Gen., Envtl. Prot. Agency, to Republican Staff, S. Comm. on Envt. & Pub. Works (Dec. 10, 2013, 1:34 PM EST).

<sup>&</sup>lt;sup>9</sup> Letter from Arthur Elkins, Inspector Gen., Envtl. Prot. Agency, to Hon. David Vitter, Ranking Member, S. Comm. on Envt. & Pub. Works (Jan 14, 2014).